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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION**

FAYE CHAPMAN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

WORLD'S FINEST CHOCOLATE, INC.
AND DOES 1-10,

Defendants.

Case No. 23CV038555

*[Assigned for All Purposes to Hon. Somnath
Raj Chatterjee, Dept. 21]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR APPROVAL
OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AND DISMISSAL OF
CLASS CLAIMS PURSUANT TO
CALIFORNIA RULES OF COURT 3.770**

RESERVATION ID: 764348946450

Date: February 4, 2025

Time: 1:30 P.M.

Dept.: 21

1 On January 7, 2025, Plaintiff Faye Chapman (“Plaintiff”), on behalf of the State and
2 aggrieved employees, and Defendant World’s Finest Chocolate, Inc. (“WFC” or “Defendant”)
3 entered into a settlement agreement resolving Plaintiff’s claim under the Private Attorneys’ General
4 Act, Labor Code §§ 2698 *et seq.* (“PAGA”), and providing for the dismissal of her putative class
5 claims without prejudice and her individual claims with prejudice (“PAGA Settlement”).

6 The Court now has before it Plaintiff’s Motion for Approval of PAGA Settlement and
7 Dismissal of Class Claims Pursuant to California Rules of Court 3.770 (“the Motion”), which
8 Defendant does not oppose, filed on January 8, 2025, together with exhibits and supporting
9 materials.

10 Having reviewed Plaintiff’s Motion, the memorandum in support of the Motion, the
11 Declarations of Rachel Bien, and the exhibits attached thereto, and based on the Court’s knowledge
12 of the record in this case, the Court is satisfied that the PAGA Settlement was the result of good
13 faith, arm’s-length negotiations among competent and experienced counsel for both Plaintiff and
14 Defendant.

15 Having considered the submissions of the Parties, and good cause appearing therefore, the
16 Court now enters the following Findings of Fact, Conclusions, Order, and Judgment.

17 **PROCEDURAL HISTORY**

18 1. On July 17, 2023, Plaintiff filed a putative class action against WFC, alleging that
19 WFC had misclassified its Independent Sales Representatives (“ISRs”) as independent contractors,
20 rather than employees under California law. In addition to her class claims, Plaintiff also raised
21 individual claims against WFC for breach of contract based on the alleged failure to pay her owed
22 commissions. After submitting the required notice under PAGA and exhausting the notice period,
23 Plaintiff filed a First Amended Complaint (“FAC”) on August 28, 2023, adding a PAGA claim.

24 2. Prior to engaging in settlement negotiations, the parties engaged in motion practice
25 and discovery, including serving discovery demands and producing responsive documents and data,
26 including policies relating to ISRs’ compensation terms, job postings and descriptions, and other
27 documents relevant to ISRs’ classification as independent contractors.

3. Plaintiff provided her counsel with communications and training materials relating to her work as an ISR and other relevant records. Plaintiff's counsel also obtained information regarding the claims and damages through interviews conducted with putative class members.

4. In advance of mediation, Defendant produced records reflecting for each putative class member: their compensation for each year of the class period, their dates of work, and whether they signed a release of claims and if so, the amount Defendant paid them. Based on this discovery, Plaintiff's counsel was well-prepared to evaluate the strengths and weaknesses of the claims.

5. On October 16, 2024, the parties attended a mediation with Jeffrey Fuchsman, Esq. No agreement was reached during the mediation, but the parties continued to work with Mr. Fuchsman toward a resolution. On January 7, 2025, the parties executed a long-form settlement agreement, which is attached to the Bien Decl. as Exhibit C.

FINDINGS OF FACT

1. All terms used in this Order have the same meaning as set forth in the PAGA Settlement.

2. The PAGA Settlement Members consist of all California ISRs who worked during the PAGA Period. There are 30 PAGA Settlement Members.

3. The Court finds that the PAGA Settlement confers substantial benefits on the State and PAGA Settlement Members. Pursuant to its terms, Defendant will pay a Gross Settlement Amount of \$495,000, which is non-reversionary. The Gross Settlement Amount will be used to pay the following amounts associated with the Settlement: (1) civil penalties paid to the State of California in settlement of the Released PAGA Claims in the amount of \$229,030.43 and to PAGA Settlement Members in the amount of \$76,343.48; (2) a Service Payment to Plaintiff in the amount of \$5,000, which was subject to Court approval; (3) Attorneys' Fees of \$165,000 and Costs of \$16,626.09, which were subject to Court approval; and (4) all costs necessary to administer the Settlement, including payment for the services of the Settlement Administrator, which was anticipated not to exceed \$3,000.

4. The amount paid to each PAGA Settlement Member will be based on the number of pay periods that each aggrieved employee worked during the relevant period.

5. Defendant will cause the Gross Settlement Amount to be paid into a Qualified Settlement Fund administered by the Settlement Administrator within 10 days of the Effective Date, which is defined as: after the Court grants approval of the Settlement and upon Plaintiff's service of the Notice of Entry of Order and/or Judgment on Defendant and upon the latter of: (i) if no appeal or other challenge is filed, the sixty-first day following Notice of Entry of the Court's Order and/or Judgment; or (ii) if an appeal is filed, (a) the date of affirmance of an appeal of the Order and/or Judgment becomes final under the California Rules of Court; or (b) the date of final dismissal of any appeal from the Order and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order and/or Judgment.

6. The Settlement Administrator will cause all payments to be issued within 30 days of Defendant's deposit.

CONCLUSIONS OF LAW

7. **PAGA Settlement Approval.** PAGA settlements are subject to court review, “ensuring that any negotiated resolution is fair to those affected.” (*Williams v. Super. Ct of Los Angeles County* (2017) 3 Cal.5th 531, 549 [quoting Cal. Lab. Code 2699(1)(2)] [internal quotation marks omitted].) Although PAGA does not set forth the particular standards against which a PAGA settlement should be evaluated, some of the factors for review of a class action settlement under Fed. R. Civ. P. 23, Cal. Code Proc. § 382, and Cal. Rules of Court, Rule 3.769 may be “useful in evaluating the fairness of a PAGA settlement” by the reviewing court. (*See Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77.) In particular, “while PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted.” (*Id.*) Furthermore, “[b]ecause many of the factors used to evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely

1 duration of further litigation, and the settlement amount—these factors can be useful in evaluating
2 the fairness of a PAGA settlement.” (*Id.*)

3 8. Having considered these factors and the evidence submitted by Plaintiff, the Court
4 concludes that the PAGA Agreement meets the requirements for approval. The PAGA Settlement
5 is the product of arm’s-length bargaining between the Parties, including the use of an experienced
6 neutral. Plaintiff engaged in extensive investigation, discovery, and motion practice before
7 resolving her claims. Her counsel have significant experience in similar PAGA and wage and hour
8 litigation and thus the ability to assess the reasonableness of the settlement terms.

9 9. In addition, the applicable fairness factors support a finding of fairness, and
10 therefore, approval of the PAGA Settlement is warranted. Because liability remains highly
11 contested, the Parties will face significant additional time, expenses, and risk if this Action
12 continues. Defendant argues that ISRs are not employees but were properly classified as
13 independent contractors and are therefore not entitled to any damages or penalties. Defendant also
14 argues that the appropriate test for determining ISRs’ status is not the “ABC” test under *Dynamex*
15 *Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903, but the multi-factor tests under Lab.
16 Code §§ 2776 (business-to-business) and/or 2783(e) (direct salespeople). Although Plaintiff
17 believes that Defendant would not be able to establish all of the factors of these tests, she recognizes
18 that the question of whether ISRs were properly classified as independent contractors and the
19 appropriate legal standard raise risk and uncertainty.

20 10. Even if the Court entered judgment in Plaintiff’s favor, it could be overturned on
21 appeal. Plaintiff and her counsel have taken into account the uncertainty and risks inherent in any
22 litigation, especially in complex actions like this one. The information the Parties received through
23 discovery, as well as the additional information and data exchanged during settlement negotiations,
24 has been sufficient to create “an understanding of the amount that is in controversy and the realistic
25 range of outcomes of the litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
26 116, 120.) In considering settlement, Plaintiff and her counsel thus carefully balanced the risks of
27 continuing to engage in protracted and contentious litigation and an appeal.

11. In light of these risks, the Court concludes that the PAGA Settlement, which secures substantial monetary relief for the State and aggrieved employees, is a fair result that satisfies the requirements for PAGA approval.

12. The Court further concludes that the PAGA Settlement's Release is acceptable because it is appropriately limited to the claims asserted in the Action or based on facts asserted in the Action.

13. As such, the Court finds that the PAGA Settlement and all of its terms which are incorporated herein by reference, are fair, reasonable, and adequate.

14. ***Attorneys' Fees and Costs.*** The Court approves as fair and reasonable the amounts requested by Plaintiff's counsel for the services they have rendered in prosecuting the Action in the amount of \$165,000, and plus litigation costs and expenses in the amount of \$16,626.09, which will be paid from the Gross Settlement Amount. The Court finds that the fee requested of one-third of the Gross Settlement Amount is a reasonable percentage given counsel's work in this case, and the expenses requested were reasonably incurred. (*See, e.g., In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"] [internal quotation marks omitted]; *Cicero v. DirecTV, Inc.* (C.D. Cal. July 27, 2010) No. 07 Civ. 1182, 2010 WL 2991486, at *6 [California district courts "usually award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million"].)

15. The Court has also reviewed the evidence counsel has submitted in support of their lodestar, including the hours spent on the litigation, and Counsel's hourly rates. The Court finds that the hours spent, and Counsel's hourly rates are reasonable. Counsel's fee request is less than their lodestar. Although the Court would not typically find a negative multiplier appropriate here considering the quality of counsel's representation, the novelty and complexity of the issues involved, the results obtained, and the contingent risk presented, the Court finds the fee request is reasonable and appropriate.

16. ***Service Payment.*** The Court awards a service payment to Plaintiff in the amount of \$5,000, to be paid from Gross Settlement Amount. The amount is fair and reasonable for the services performed by Plaintiff, including her participation in counsel's investigation of the facts, her review of court filings, her efforts to locate relevant documents, her participation in settlement negotiations, and her willingness to take on these burdens for the benefit of her co-workers, and the risks she assumed by having her name associated with the lawsuit.

17. ***Settlement Administration Costs.*** The Court authorizes payment of up to \$3,000 as reimbursement for the Settlement Administrator's costs, to be paid from the Gross Settlement Amount. The Court approves ILYM Group, Inc.'s appointment as the Settlement Administrator. In the event that the administration costs are under \$3,000, any unused funds will become part of the Net Settlement Amount.

18. ***Dismissal of Class Claims Without Prejudice.*** As part of the settlement, Plaintiff has requested that the Court dismiss her putative class action claims without prejudice under Rule of Court 3.770. The Court finds that, under the circumstances, dismissal is appropriate. Defendant has already obtained individual releases of the claims from 31 of the 46 putative class members in exchange for settlement payments. No class has been certified. The dismissal will not affect the rights of putative class members who wish to pursue their claims in separate lawsuits. Their claims were tolled for the pendency of this lawsuit and will continue to be tolled through the Effective Date.

19. Without affecting the finality of this order in any way, pursuant to California Rules of Court, rule 3.769(h), the Court shall retain exclusive jurisdiction with respect to the interpretation, implementation and enforcement of the terms of the PAGA Settlement, all orders and judgments entered in connection therewith, and other matters ancillary to the PAGA Settlement, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the PAGA Settlement and all orders and judgments entered in connection therewith.

1 **ORDER AND JUDGMENT**

2 IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for
3 PAGA Settlement Approval and Dismissal of Class Claims is GRANTED. The terms of the PAGA
4 Settlement are adjudged to be fair, reasonable, and adequate. The Parties are ordered to implement
5 the terms of the PAGA Settlement in accordance with this Order. Plaintiff's individual claims shall
6 be dismissed with prejudice upon the Effective Date. Plaintiff's putative class claims shall be
7 dismissed without prejudice upon the Effective Date and the applicable statutes of limitations on
8 those claims shall continue to be tolled through the Effective Date. Judgment is hereby entered on
9 the Released PAGA Claims. The Court hereby retains jurisdiction over the Parties to enforce the
10 terms of the Judgment pursuant to California Rules of Court, rule 3.769(h).

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12 **IT IS SO ORDERED.**

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14 Date: _____

15 Hon. Somnath Raj Chatterjee
16 JUDGE OF THE SUPERIOR COURT
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